IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
WRIT PETITION NO.8643 OF 2005

Shekhar Kheru Sonawane ...Petitioner.
V/s.
The State of Maharashtra & Ors. ...Respondents.

Shri N.V.Bandiwadekar for the Petitioner.
Shri P.P.Kakade, A.G.P. for the Respondent Nos.1 and 2.
Shri U.B.Nighot for the Respondent Nos.3 and 4.
Shri Niranjan Shimpi for the Respondent Nos.3 and 4.

CORAM: B.H.MARLAPALLE &
J.H.BHATIA, JJ.
DATE : 20th November, 2006.

P.C.:

1. Heard the learned counsel for the respective parties.

2. The petitioner is seeking a writ of mandamus against the Respondent Nos.2 to 4 to allow him to join in the post of clerk on the basis of the purported appointment of 5-7-2005 issued by the Respondent No.3.

3. The Management has filed affidavit-in-reply and has pointed out that the appointment of the petitioner was not as per the rules or the selection procedure undertaken and the chairman in his personal capacity had issued the said appointment order. We, therefore, called upon the Education Officer (Secondary) , Zilla Parishad, Thane who is impleaded as the Respondent No.2

to file his reply and in his affidavit, he has pointed out that the appointment of the petitioner is illegal. One Shri Deepak Sadashiv Landge was employed as a junior clerk under the Respondent No.4-School up to 15-2-2000 and subsequently, he remained absent. As a result, his services were dispensed with and one Smt. Chhaya Namdeo Gangurde came to be appointed in the same post with effect from 1/10/2005. Record further shows that the appointment of Smt. Chhaya N. Gangurde has been approved on temporary basis.

4. Mr.Bandiwadekar, the learned counsel for the petitioner has invited our attention to the advertisement on 24.5.2004 and also the notice of the same date dispensing with the service of Shri Landge. He claims that the applications were invited and the selection process was undertaken. But the fact remains that the procedure as contemplated under the MEPS Act, 1977 and the Rules framed thereunder were not followed and admittedly, the post is reserved for the candidate belonging to the scheduled tribe. Both the petitioner as well as Smt. Chhaya N. Gangurde belong to the scheduled caste and both are under graduates.

5. Having considered the rival submissions addressed before us of the respective parties, we are of

the view that the post of junior clerk under the respondent no.4 should be advertised afresh clearly pointing out that it is reserved for the candidate belonging to scheduled tribe and the petitioner as well as Smt.Chhaya N. Gangurde may apply so as to stand for considerations in case, the scheduled tribe candidate is not available.

6. Hence, we dispose off the petition by directing the management to release an advertisement for the post of junior clerk in the local Marathi newspaper to fill in the post of junior clerk and pointing out that the post is reserved for scheduled tribe. On receipt of the applications, the procedure as required under the advice of the respondent no.2 shall be complied with and the post shall be filled in as expeditiously as possible but in any case, before 31st January, 2007.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)